

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re  Achaogen, Inc.,  Debtor. <sup>1</sup>	Chapter 11  Case No. 19-10844 (BLS)
Edward E. Neiger, not individually but as Plan Trustee of the Achaogen Plan Trust,  Plaintiff  v.  Cipla USA Inc.,  Defendant.	Adv. Pro. No. 21-50479 (BLS)

**STIPULATION AND REVISED SCHEDULING ORDER**

WHEREAS, Edward E. Neiger, not individually but as Plan Trustee of the Achaogen Plan Trust (“Plaintiff”), initiated this adversary proceeding (the “Adversary Proceeding”) on May 27, 2021 by filing a complaint (the “Complaint”) against Cipla USA Inc. (“Defendant” and together with Plaintiff, the “Parties”); and

WHEREAS, on August 6, 2021, Defendant filed *Defendant’s Motion to Dismiss* (the “Motion to Dismiss”)<sup>2</sup> seeking to dismiss a portion of the claims in the Complaint; and

WHEREAS, on January 30, 2023, the Court entered the *Order* which granted in part and denied in part the Motion to Dismiss;<sup>3</sup> and

---

<sup>1</sup> The last four digits of Achaogen’s federal tax identification number are 3693. The last four digits of the Achaogen Plan Trust’s tax identification number are 4172.

<sup>2</sup> Adv. Docket No. 9.

<sup>3</sup> Adv. Docket No. 26.

WHEREAS, on February 27, 2023, Defendant filed an *Answer*;<sup>4</sup> and

WHEREAS, the Parties scheduled an in-person mediation for May 1, 2023, which mediation was rescheduled and took place on June 22, 2023, and was followed by additional sessions and negotiations which took place in July and August 2023; and

WHEREAS, the Parties were ultimately unable to reach a resolution at mediation and the mediator filed the *Mediator's Certificate of Completion* on August 18, 2023;<sup>5</sup> and

WHEREAS, the deadlines in this Adversary Proceeding are governed by the *Stipulation and Revised Scheduling Order* entered on August 24, 2021 (the "Scheduling Order");<sup>6</sup> and

WHEREAS, the Parties desire to amend the deadlines in the Scheduling Order as set forth herein to allow the Court to enter a ruling on a preliminary legal question.

WHEREFORE, IT IS HEREBY STIPULATED AND AGREED, by the parties hereto, through their undersigned counsel, subject to approval of the Court, as follows:

A. The Motion for Summary Judgment / Declaratory Relief

1. Defendant shall have thirty (30) days following entry of this Stipulation and Revised Scheduling Order in which to file a motion for partial summary judgment and/or declaratory relief (the "Motion") solely with respect to whether the Bidding Procedures Order, applicable agreements and/or Sale Order operate to limit the amount of damages to which Plaintiff is entitled in this Adversary Proceeding.

2. Plaintiff shall have thirty (30) days following the filing of the Motion in which to file a response (the "Response").

3. Defendant shall have fourteen (14) days following the filing of the Response in

---

<sup>4</sup> Adv. Docket No. 30.

<sup>5</sup> Adv. Docket No. 35.

<sup>6</sup> Adv. Docket No. 17.

which to file a reply (the “Reply”). Plaintiff reserves the right to seek leave to file a sur-reply.

4. Following the filing of a Reply and any sur-reply as permitted, the Parties shall file a notice of completing of briefing and cooperate in requesting a hearing date at the Court’s earliest convenience.

5. All discovery shall be stayed in this Adversary Proceeding until such time as the Court has ruled on the Motion.

**B. Deadlines Following Entry of Order on Motion**

6. The following schedule shall be in effect following a ruling by the Court on the Motion, and shall govern the proceeding in this matter:

<b>ACTION</b>	<b>DATE</b>
a) Deadline to respond to outstanding discovery requests issued prior to mediation	60 days following entry of Order resolving the Motion
b) Deadline to complete fact discovery, including depositions (except for any fact discovery subject to a motion to compel or motion for protective order pending on this date).	150 days following entry of Order resolving the Motion
c) Plaintiff’s identification of expert witnesses and disclosure of opening expert reports, if any.	30 days after deadline to complete fact discovery
d) Defendant’s identification of expert witnesses and disclosure of opening expert reports, if any.	30 days after Plaintiff’s deadline to identify expert witnesses
e) Plaintiff’s disclosure of rebuttal expert reports, if any.	30 days after Defendant’s deadline to identify expert witnesses
f) Completion of expert discovery, including expert depositions (Except for any expert discovery subject to a motion to compel or motion for a protective order pending on this date).	60 days after receipt of rebuttal report(s)
g) Deadline to file dispositive motions	45 days after completion of expert discovery

7. Depositions shall be taken on reasonable notice, and the parties shall work

together in good faith on the scheduling of depositions. For avoidance of doubt, any deposition may be taken via telephone, videoconference, or other remote means, and may be recorded by any reliable audio or audiovisual means.

8. Dispositive motions shall be subject to Del. Bankr. L.R. 7007-1 and 7007-2.

9. If any issues remain following dispositive motions, the Court will hold a status conference and discuss a pretrial schedule and pretrial proceedings at that time.

*[Remainder of the page intentionally left blank.]*

10. The parties may amend any of the dates set forth herein by written agreement, without Court approval. This Order is without prejudice to any party seeking leave of the Court to modify this schedule for good cause.

Dated: November 14, 2023

**COLE SCHOTZ P.C.**

By: /s/ Andrew Roth-Moore

Justin R. Alberto, Esq. (No. 5126)  
Andrew Roth-Moore, Esq. (No. 5988)  
500 Delaware Avenue, Suite 1410  
Wilmington, Delaware 19801  
Telephone: (302) 652-3131  
Email: jalberto@coleschotz.com  
aroth-moore@coleschotz.com

-and-

**ASK LLP**

Nicholas C. Brown (admitted *pro hac vice*)  
Joseph L. Steinfeld, Jr., Esq.,  
Nicholas C. Brown, Esq.,  
2600 Eagan Woods Drive, Suite 400  
St. Paul, MN 55121  
Telephone: (877) 746-4275  
Fax: (651) 406-9676  
Email: nbrown@askllp.com

*Counsel for Edward E. Neiger, in his Capacity as  
Plan Trustee of the Achaogen Plan Trust*

**POTTER ANDERSON &  
CORROON LLP**

By: /s/ Jesse L. Noa

Jeremy W. Ryan (No. 4057)  
John A. Sensing (No. 5232)  
Jesse L. Noa (No. 5973)  
1313 N. Market Street, 6th Floor  
Wilmington, DE 19801-6108  
Telephone: (302) 984-6093  
Email: jryan@potteranderson.com  
jsensing@potteranderson.com  
jnoa@potteranderson.com

*Counsel to Cipla USA Inc.*

Dated: January 16th, 2024  
Wilmington, Delaware

  
BRENDAN L. SHANNON  
UNITED STATES BANKRUPTCY JUDGE